

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

_____)	
ACTION CAPITAL PROPERTIES, LLLP,)	
<i>ET AL.</i> ,)	
)	Case No. 19-1784L
Plaintiffs,)	
)	Hon. Thomas C. Wheeler
v.)	
)	
THE UNITED STATES OF AMERICA,)	(E-Filed January 13, 2020)
)	
Defendant.)	
_____)	

ANSWER TO COMPLAINT

Pursuant to Rules 7(a), 8(b), and 12 of the Rules of the United States Court of Federal Claims, Defendant United States of America answers the allegations in the numbered and unnumbered paragraphs of Plaintiffs' Complaint.

The paragraph numbers in this Answer correspond to the paragraph numbers in the Complaint. The headings used in this Answer follow the major section headings used in the Complaint and are included solely for the purpose of organizational convenience in matching the answers provided herein with the allegations made in the Complaint. The headings are not part of the United States' Answer to the allegations. The United States does not waive any defensive theory or agree to or admit that Plaintiffs' headings are accurate, appropriate, or substantiated. When a textual sentence is followed by a citation or citations, the textual sentence and its accompanying citation are referred to as one sentence.

“JURISDICTION”

1. The allegations in Paragraph 1 are conclusions of law to which no response is required. To the extent a response is required, the United States admits that the Tucker Act, 28

U.S.C. § 1491(a)(1), confers jurisdiction on this Court to hear certain claims based on alleged violations of the Fifth Amendment to the United States Constitution.

2. The United States lacks knowledge or information sufficient to form a belief as to the purported basis of Plaintiffs' claims, as alleged in Paragraph 2, and on that basis denies those allegations. To the extent that the allegations in Paragraph 2 are conclusions of law, no response is required. To the extent a response is required, those allegations are denied.

“COUNT ONE”

“(TAKINGS CLAIM)”

3. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3 and on that basis denies those allegations.

4. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4 and on that basis denies those allegations.

5. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5 and on that basis denies those allegations. To the extent the allegations in Paragraph 5 are conclusions of law, no response is required. To the extent a response is required, those allegations are denied.

6. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6 and on that basis denies those allegations.

7. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 7 and on that basis denies those allegations.

8. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 8 and on that basis denies those allegations.

9. The United States admits that, on November 5, 2019, the STB issued a Decision and Notice of Interim Trail Use or Abandonment. That document speaks for itself, and to the extent the allegations in Paragraph 9 purport to characterize or set forth the contents of that document, it is the best evidence of its contents and the United States denies any allegation that is inconsistent with that document.

10. The allegations in Paragraph 10 are conclusions of law to which no response is required. To the extent a response is required, those allegations are denied.

11. The allegations in Paragraph 11 are conclusions of law to which no response is required. To the extent a response is required, those allegations are denied.

12. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12 and on that basis denies those allegations. To the extent the allegations in Paragraph 12 are conclusions of law, no response is required. To the extent a response is required, those allegations are denied.

13. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 13 and on that basis denies those allegations.

14. The allegations in Paragraph 14 are conclusions of law to which no response is required. To the extent a response is required, those allegations are denied.

Following paragraph 14 there is an unnumbered paragraph that sets forth Plaintiffs' request for relief, to which no response is required. To the extent that a response is required, the United States denies that Plaintiffs are entitled to the requested relief or any relief whatsoever.

GENERAL DENIAL

All of the allegations in Plaintiffs' Complaint which have not been specifically admitted, denied, or otherwise answered, are hereby denied.

UNITED STATES' DEFENSES

First Defense

Plaintiffs' Complaint fails to state a claim for which relief can be granted.

Second Defense

To the extent Plaintiffs did not own an interest in the property allegedly taken on the date of the alleged taking, Plaintiffs lacks standing to seek just compensation under the Fifth Amendment.

Third Defense

Plaintiffs are not entitled to just compensation under the Fifth Amendment because there was no taking of private property.

PRAYER

WHEREFORE, the United States of America denies that Plaintiffs are entitled to the relief requested, or any relief whatsoever, and requests that this action be dismissed with prejudice, that judgment be entered for the United States, and that the United States be granted such other relief as the Court will allow.

Respectfully submitted this 13th day of January, 2020.

JEAN E. WILLIAMS
Deputy Assistant Attorney General
United States Department of Justice
Environment & Natural Resources Division

/s/ Dustin J. Weisman
Dustin J. Weisman
Natural Resources Section
4 Constitution Square, 150 M Street N.E., Suite 2.900
Washington, D.C. 20001
Tel: (202) 305-0432
Fax: (202) 305-0506

Email: dustin.weisman@usdoj.gov

Counsel of Record for United States